

Exhibit A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of:)	
)	
Inventors: Phillip B. Blankenship et al.)	
)	Examiner: Eric B. Fuller
Serial No.: 09/893,314)	
)	Group Art Unit: 1762
Filed: June 27, 2001)	
)	Confirmation No.: 2106
For: A SYSTEM FOR REPAIRING)	
DISTRESSED ROADS THAT)	Docket No.: 506418.0047
INCLUDES AN ASPHALT)	
INTERLAYER)	
)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF PHILLIP B. BLANKENSHIP UNDER 37 C.F.R. § 1.132

I hereby declare as follows:

1. My name is Phil Blankenship. I received both a B.S. and a M.S. in Civil Engineering from University of Kentucky in Lexington, Kentucky. The specialty area of my master's degree was transportation materials. I am a registered Professional Engineer in Kansas.
2. I have over 11 years of experience in road paving design and construction. This experience includes over 8 years of industry experience in designing roads and improving paving techniques and about 3 years of government experience with the Kentucky Transportation Cabinet. I am currently a Platform Technology Leader of Koch Materials Company, a subsidiary of the assignee of the above-referenced application. Throughout my career, I have attended numerous continuing education courses relating to the design of pavement systems. I serve on the National Cooperative Highway Research Program review panel for the National Academy of

Science. I also serve as a friend of the Transportation Research Board committee on Flexible Pavement Construction and Rehabilitation.

3. I am an inventor of the above-referenced application.

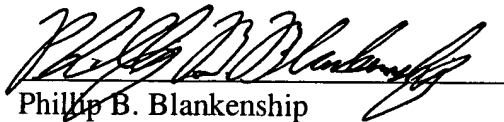
4. I have reviewed U.S. Patent No. 6,248,396 to Helf (Helf), U.S. Patent No. 5,306,750 to Goodrich (Goodrich), U.S. Patent No. 3,907,582 to Walter (Walter), and U.S. Patent No. 3,891,585 to McDonald (McDonald). I also have reviewed the March 25, 2004 Office Action from the Patent Office that cites these references and rejects the claims of the above-referenced patent application.

5. Typically, in order to improve the stability of an asphalt mixture, its fatigue resistance must be sacrificed. In contrast, when improving the fatigue resistance of an asphalt mixture, the stability of the mixture must be sacrificed. Accordingly, it is counterintuitive to test both stability and fatigue as one of ordinary skill in the art would assume that one must be sacrificed for the other. Further, one of ordinary skill in the art would not be motivated to optimize both the stability and fatigue performance of an asphalt mixture for a roadway interlayer, as such characteristics are considered opposite extremes.

6. It is significant that the claimed invention relates to making an interlayer and not a surface layer or a base layer. It is particularly desirable to optimize the stability and fatigue performance of an interlayer. In contrast, for example, a surface layer must have such a high stability that it would not be desirable to try to risk failure in order to improve its fatigue resistance. Accordingly, references such as Goodrich, Walter, and McDonald, which do not suggest making an interlayer, are not analogous art to the claimed invention. One of ordinary skill in the art would not look to these references when trying to improve techniques for making an interlayer.

7. Still further, roads typically are not designed by measuring performance properties of one or more asphalt mixtures before selecting the asphalt mixture to be used for making the interlayer. Further, asphalt mixtures are not typically selected based on the measured performance properties. In addition, the desired performance properties typically are not known before performing the fatigue and stability tests. While performance properties of an asphalt layer have been measured after a pavement layer has been laid, there is no suggestion by Helf, Walter, Goodrich, or McDonald to run performance tests on one or more asphalt mixtures and then select an asphalt mixture for use in paving the road after performing and based on the performance tests.

8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Phillip B. Blankenship

Date: May 25, 2004